



2024 INSC 160

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 2451 OF 2022

SOLAR ENERGY CORPORATION OF INDIA LIMITED (SECI) APPELLANT(S)
VERSUS
WIND FOUR RENERGY PRIVATE LIMITED & ORS. RESPONDENT(S)

J U D G M E N T

1. The appellant - Solar Energy Corporation of India Limited¹ impugns the judgment and order dated 11.01.2022 passed by the Appellate Tribunal for Electricity² at New Delhi, whereby the appeal preferred by respondent no. 1 - Wind Four Renergy Private Limited³ was allowed, directing that the period of 132 days, for which delay was to be condoned, would commence from the date of the impugned judgment, that is, 11.01.2022.
2. Respondent no. 1 - WFRPL and respondent no. 3 - Power Trading Company India Limited⁴ had entered into five Power Purchase Agreements⁵ dated 21.07.2017. *Vide* each of the said PPA, WFRPL had agreed to establish a 50 MW wind power unit and generate to supply renewable (wind) power to PTC. The

1 "SECI", for short.
2 "APTEL", for short.
3 "WFRPL", for short.
4 "PTC", for short.
5 "PPA", for short.

appellant - SECI is the implementing agency for the project, being the nodal agency of the Central Government to promote renewable energy such as solar, wind etc. The Scheduled Commercial Operation Date⁶/commissioning was 04.10.2018, 18 months from the date of the Letter of Award⁷ dated 05.04.2017. Further, WFRPL was entitled to an additional time with liquidated damages and reduction in tariff of upto 9 months, that is till 05.07.2019. The commissioning deadline or maximum period allowed for commissioning was 27 months from the date of LoA. Thus, the maximum period allowed for commissioning was till 05.07.2019.

3. It is an accepted and admitted position that the inter-state transmission licensee - Power Grid Corporation of India Limited was unable to operationalise the Long Term Access⁸, which was required and necessary to implement and comply with the PPAs. The LTA was subsequently operationalised on 14.04.2019.
4. In terms of the letter dated 22.10.2019 issued by the Ministry of New & Renewable Energy, Government of India certain concessions and extension of milestones in wind power projects were granted. As per Clause 2(c) of the said letter, the wind power projects shall be granted extension in scheduled commissioning of the project for a period equal to 60 days, subsequent to operationalisation of LTA. This is the additional time to be provided to the

6 "SCOD", for short.

7 "LoA", for short.

8 "LTA", for short.

generator/developer to complete the commissioning activities after the inter-state transmission system is ready.

5. It is conceded before us by the appellant that WFRPL would be entitled to extension of the commissioning date till 13.06.2019 on account of the period of 60 days, as stipulated in the letter dated 22.10.2019. Accordingly, the additional time allowed with payment of liquidated damages and the reduction of tariff and the maximum period allowed for commissioning, that is, 9 months and 27 months from the date of issue of LoA, will be computed.
6. WFRPL had approached the Central Electricity Regulatory Commission⁹, New Delhi, with the assertion that they were not informed about the commissioning of the LTA by the appellant till 22.11.2019. Not being aware as to the date of operationalisation of the LTA, WFRPL contended that they should be granted extension of time by 132 days, that is till 21.11.2019.
7. The CERC, by its order dated 08.03.2021, accepted the contention of WFRPL. Accordingly, the revised scheduled date of commissioning was pushed to 23.10.2019. This order was accepted by the appellant - SECI. The effect thereof would be that the additional time of 9 months allowed after the scheduled date with liquidated damages and reduction of tariff and the last date of the maximum period allowed for commissioning, that is, 27 months from the date of the LoA, will accordingly be computed.

⁹ "CERC", for short.

8. WFRPL, however, preferred an appeal before the APTEL, which appeal, as stated above, has been allowed with the direction that the period of 132 days, for which delay has been condoned, would commence from the date of judgment in the appeal by APTEL, that is, from 11.01.2022.
9. We have heard learned counsel for the parties at some length and are of the opinion that the impugned judgment and the operative directions given therein, are unsustainable as irrational as well as being contrary to the scheme and the PPA.
10. It is an accepted position that there were 5 PPAs, which have been entered into between the parties on 21.07.2017 of 50 MW each. The wind power generation units which were subject matter of the 4 PPAs were located in the same vicinity as in case of the 5th PPA. This appeal and impugned order relates only to the 5th PPA. WFRPL has not been able to operationalise this PPA by commissioning the wind power generation units. The four other PPAs have been operationised.
11. We have on record the letters of WFRPL, dated 25.03.2019, stating that the project was at an advance stage of completion and WFRPL shall be able to commission the project on or before 31.05.2019, subject to readiness of evacuation system. By another letter dated 25.04.2019 written by WFRPL, they had stated that the evacuation systems have been made ready for power evacuation with effect from 14.04.2019.

Further, WFRPL shall be able to operationalise and commission the 5th power station by 30.06.2019. However, as accepted before us by WFRPL, the 5th power generation unit has not been operationalised even today.

12. Even otherwise, once WFRPL became aware and had knowledge that LTA was functional, and they had been granted benefit of 60 days in terms of the letter dated 22.10.2019 and 132 days in terms of the order of the CERC, the direction that the period of 132 days shall commence from the date the APTEL order is irrational. The objective and purpose of timelines is to ensure early supply of green energy and reduction of carbon footprint. Tariffs of green energy, it is well known, have come down substantially.
13. In view of the aforesaid position, we set aside the impugned judgment dated 11.01.2022. The order dated 08.03.2021 passed by the CERC is restored and will operate and bind the parties.
14. We are informed that pursuant to the impugned judgment, the appellant - SECI had refunded Rs.10 crores to WFRPL, SECI having encashed the performance bank guarantee. The appellant - SECI would be entitled to recover the said amount along with simple interest at the rate of 12% per annum from the date when the payment was made till the amount is refunded by WFRPL. In case the payment of Rs.10 crores along with interest as directed, is not refunded within six months from the date of this order, the appellant

- SECI will be entitled to recover Rs. 10 crores plus interest as per the provisions of the Electricity Act, 2003. Thus, in case of default and non-payment within the time stipulated, the principal amount of Rs.10 crores, as well as, simple interest at the rate of 12% per annum accrued thereon, will be treated as electricity dues and accordingly be recovered along with interest, as applicable, in accordance with the Electricity Act, 2003 and the applicable rules.

15. The appeal is allowed and disposed of in the above terms. Pending application(s), if any, shall stand disposed of.

.....J.
(SANJIV KHANNA)

.....J.
(DIPANKAR DATTA)

NEW DELHI;
FEBRUARY 27, 2024.

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGSCIVIL APPEAL NO. 2451 OF 2022

SOLAR ENERGY CORPORATION OF INDIA LIMITED (SECI)

APPELLANT(S)

VERSUS

WIND FOUR RENERGY PRIVATE LIMITED & ORS.

RESPONDENT(S)

(FOR ADMISSION and I.R. and IA No.45753/2022-EX-PARTE STAY and IA No.46347/2022-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Date : 27-02-2024 This matter was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE DIPANKAR DATTA

For Appellant(s)

Mr. C. Aryama Sundaram, Sr. Adv.
Mr. M.G. Ramachandran, Sr. Adv.
Ms. Anushree Bardhan, Adv.
Mr. Nikunj Dayal, AOR
Mr. Aneesh Bajaj, Adv.

For Respondent(s)

Mr. T. Mahipal, AOR
Mr. Alok Krishna Agarwal, Adv.
Mr. Naveen Chawla, Adv.
Mr. Mayank Bughani, Adv.

Ms. Prerna Singh, Adv.
Mr. Guntur Prabhakar, AOR
Mr. Ravi Kishore, Adv.
Mr. Guntur Pramod Kumar, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The appeal is allowed and disposed of in terms of the signed non-reportable judgment.

Pending application(s), if any, shall stand disposed of.

(DEEPAK GUGLANI)
AR-cum-PS(R.S. NARAYANAN)
ASSISTANT REGISTRAR

(signed non-reportable judgment is placed on the file)